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**UTAH LABOR COMMISSION**

**THOMAS K. STANWORTH,**

**Petitioner,**

**vs.**

**DELTA EGG FARM, LLC and  
OLD REPUBLIC INSURANCE CO.,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

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**ORDER OF REMAND**

**Case No. 04-0494**

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Delta Egg Farm, LLC and its insurance carrier, Old Republic Insurance Co., (hereafter referred to jointly as "Delta") ask the Utah Labor Commission to review Administrative Law Judge Lima's award of benefits to Thomas K. Stanworth under the Utah Occupational Disease Act, Title 34A, Chapter 3, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Mr. Stanworth claims occupational disease benefits for a respiratory disease that allegedly developed from his work at Delta by August 10, 2001. Judge Lima held an evidentiary hearing and then referred the medical aspects of the case to a medical panel due to conflicting medical opinions. After reviewing the panel's report, Judge Lima found Mr. Stanworth's respiratory condition was caused entirely by his work exposure at Delta and entered a preliminary order for permanent total disability compensation.

In its motion for review, Delta argues that Judge Lima should have apportioned Mr. Stanworth's benefits based on other non-work related contributing conditions.

**FINDINGS OF FACT**

The Commission adopts Judge Lima's findings of fact with supplementation from the evidentiary record. The facts relevant to the motion for review are as follows:

Prior to working at Delta, Mr. Stanworth had smoked for 15 to 20 years, quitting in 1996. In November of 1999, Mr. Stanworth began working for Delta in the chicken houses performing various duties that included de-beaking and vaccinating the chickens, moving and separating chickens as necessary, sweeping and blowing dust from the floors of the chicken houses, and cleaning the cages. As early as May of 2000, Mr. Stanworth complained to his doctor, Dr. Shamo, that he was having breathing problems and coughing.

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On June 7, 2000, Dr. Ross, a pulmonologist, examined Mr. Stanworth and took Mr. Stanworth off work for five days. Dr. Ross's first impression was that Mr. Stanworth had occupational asthma related to chicken dander, noting that his past history of smoking **may** be a component. By October 2001, Mr. Stanworth quit his job at Delta due to his health problems and has not returned to any work. On December 4, 2001, Dr. Ross noted Mr. Stanworth had developed hypoxemia and requires oxygen. Dr. Ross assessed "possible hypersensitivity pneumonitis . . . we need to further investigate this lung process to try and find and[sic] etiology. It does not appear to be totally related to cigarette smoking in the past." At Delta's request, Mr. Stanworth also was examined by Dr. Kanner, another pulmonologist, in December 2001. Dr. Kanner confirmed that Mr. Stanworth likely developed hypersensitivity pneumonitis due to his chicken plant exposure and required further treatment.

Mr. Stanworth underwent further testing and continued to receive medical treatment from Drs. Shamo and Ross. By March 2002, Dr. Ross's opinion was that Mr. Stanworth had no preexisting lung disease and he assessed Mr. Stanworth's condition as interstitial lung disease and mild hypoxemia caused from work-related exposure. In Dr. Ross's May 2004 summary of the medical record, he apportioned zero percent to any preexisting condition and indicated that the work exposure caused 100% of Mr. Stanworth's respiratory condition.

Dr. Kanner also examined Mr. Stanworth again and noted that since terminating his employment at Delta, Mr. Stanworth's condition had progressed. Dr. Kanner questioned whether Mr. Stanworth was still exposed to the harmful allergens at his home; he recommended an evaluation of Mr. Stanworth's living area. In September 2004, a site visit and environmental sampling was conducted at Mr. Stanworth's home. In November 2004, Dr. Kanner conducted a final follow-up examination and noted on review of the home inspection that, although there were still a few chickens present in the area, the various fungi that Mr. Stanworth has shown an allergic reaction to were not present. Nevertheless, in Dr. Kanner's opinion, Mr. Stanworth's respiratory condition was caused not only by his work exposure, but also his previous smoking and bird exposure from his home. Dr. Kanner estimated 50% of Mr. Stanworth's condition was caused by his work exposure.

Dr. Jarvis was appointed to the medical panel and, after examining Mr. Stanworth and the medical records, including the various diagnostic test results and the opinions of the treating physicians, he found Mr. Stanworth had developed hypersensitivity pneumonitis. Dr. Jarvis stated that, although Mr. Stanworth has a history of smoking, "the pulmonary findings typical of smoking induced disease are substantially different than those found in this case . . . ." He concluded that Mr. Stanworth's condition was solely caused by his work activities at Delta and that "[n]o other exposures, personal or non-work environmental, have contributed to Mr. Stanworth's condition."

**DISCUSSION AND CONCLUSION OF LAW**

In its motion for review, Delta argues that the evidence shows Mr. Stanworth's respiratory

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condition was caused, in part, by other non-work exposure and his compensation should be apportioned based on that exposure according to Section 34A-3-110 of the Utah Occupational Disease Act. Delta contends that Dr. Jarvis's opinion was contrary to the medical opinions of two pulmonologists, who concluded that Mr. Stanworth's smoking was a causative factor in his respiratory condition. Delta further contends that Dr. Jarvis was not qualified to review this case because he is not a pulmonologist, or that he should have had a pulmonologist to consult with on the panel.

The Commission disagrees with Delta's assertion that Dr. Jarvis' opinion conflicted with the opinion of Dr. Ross, a noted pulmonologist. Although Dr. Ross initially recognized Mr. Stanworth had been a smoker and that this may be a factor in his lung condition, after further testing and continuing treatment, Dr. Ross later concluded that Mr. Stanworth's lung condition was caused 100% by his work exposure; he declined to apportion any of Mr. Stanworth's respiratory condition to anything other than his work exposure. Dr. Jarvis, an impartial medical panelist specializing in occupational medicine and environmental health, reviewed the entire medical record, including the opinions of the treating physicians, the environmental report, and examined Mr. Stanworth. Dr. Jarvis concluded that Mr. Stanworth's respiratory condition was solely caused by his work exposure and not any other non-work exposure or activity and therefore no apportionment was necessary.

The Commission has reviewed the record and finds the impartial medical panel report well-reasoned, persuasive, and supported by the medical evidence, including the opinion of Dr. Ross, a pulmonologist. The Commission further finds Dr. Jarvis is well-qualified to offer a medical opinion in this matter and his detailed report demonstrates his knowledge of the facts of the case and the medical issues involved. The Commission finds Mr. Stanworth's respiratory condition was solely caused by his work exposure at Delta and therefore no apportionment of Mr. Stanworth's permanent total disability compensation is necessary.

**ORDER**

The Commission affirms Judge Lima's preliminary order for permanent total disability compensation, without apportionment, and remands the matter to the Adjudication Division for further proceedings as necessary to conclude the adjudication of Mr. Stanworth's claim for permanent total disability benefits. It is so ordered.

Dated this 24<sup>th</sup> day of January, 2009.

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Sherrie Hayashi  
Utah Labor Commissioner

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**\*\*IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOW ON NEXT PAGE\*\***

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.